IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3165 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHWIN NATUBHAI GADHAVI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR IM PANDYA AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 13/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by the District Magistrate, Bhavnagar, on 28th of December, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985

(PASA Act for short). The petitioner is under detention as dangerous person from 28th of December, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of material to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration two criminal cases registered against the petitioner and secondly four in-camera statements as recorded by sponsoring authority on 26th of November, 2004, as verified by the detaining authority on 23rd of December, 2004. The identity of witnesses is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act.

3. Out of two crimes registered against the petitioner, the first was registered before `A' Division Police Station, Bhavnagar, on 13th of September, 2004 for the offences punishable under Sections 394, 427, 506(2) and 114 of the Indian Penal Code. It was alleged that the petitioner robbed an amount of Rs. 3,770/- from the cash box of the shop of the complainant under threat of injury. The second crime came to be registered before `D' Division Police Station, Bhavnagar, on 22nd of November, 2004, for the offences punishable under Sections 394, 323 and 114 of the IPC. It was alleged that under the threat of injury through a sword, the petitioner robbed an amount of Rs. 500/- from the complainant of the said case. The detaining authority thoroughly examined the investigation papers in both these crimes and came to the conclusion that the petitioner was a habitual offender.

4. Out of four in-camera statements, the witness referred to the incidents occurred before 10 days, 8 days, 15 days and 6 days from the recording of their statements on 26th of November, 2004. The first incident revealed that the petitioner demanded Rs. 2,000/- from the witness, and on refusal, he was beaten and threatened. The second incident is in respect of threat administered by the petitioner to the witness to vacate the house and the petitioner threatened the witness by knife. In third incident, on suspicion that the witness was providing information about the petitioner, the witness was beaten. In fourth incident, the petitioner demanded Rs.5,000/- from the witness under threat through a sword and on refusal, the witness was beaten.

5. From the above material, the detaining authority came to the conclusion that the petitioner was engaged in

anti-social and illegal activities of committing robberies and threatening innocent citizens. In view of the detaining authority, the petitioner was a dangerous person within the meaning of the PASA Act. The detaining authority concluded that the petitioner was headstrong, ferocious and of violent temper. The detaining authority came to the conclusion that the dangerous activities of the petitioner were prejudicial to the maintenance of public order and were required to be prevented forthwith. After considering the remedies available against the petitioner under the general law, the detaining authority came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority therefore passed the order of detention against the petitioner, which is under challenge in this petition.

6. Learned Advocate Ms.S.G.Patel for the petitioner and learned AGP Mr. I.M.Pandya for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record was also taken into consideration.

7. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was delay in passing the order of detention which is fatal to the order of detention.

8. The facts are not in dispute that the last offence against the petitioner was registered on 22nd of November, 2004. The sponsoring authority thereafter on 26th of November, 2004, recorded the statements of the witnesses in-camera. In between, in the last offence, the petitioner was released on bail on 23rd of November, 2004. Statements of the witnesses narrated the incidents occurred on 10 days, 8 days, 15 days and 10 days before recording of the statements, and undoubtedly, before the date of registration of last offence against the petitioner. The proposal was moved to the detaining authority on 13th of December, 2004 and detaining authority verified in-camera statements on 23rd of December, 2004. The order came to be passed on 28th of December, 2004. If the date of registration of last offence is taken into consideration, then the order of detention is passed after almost 2 months. In affidavit-in-reply filed by the detaining authority, an attempt is made to explain this period, vide Para-9. It is stated that after releasing the detenu on bail by the court, he continued his anti-social activities, as

disclosed from the statements of the witnesses in the unregistered cases. Thereafter, the sponsoring authority collected necessary material and moved proposal on 13th of December, 2004. After verifying the genuineness and correctness of the statements, on 23rd of December, 2004, the order of detention came to be passed on 28th of December, 2004. In view of detaining authority, therefore, there was no delay in passing the order.

9. The facts of the present case are covered by a decision of this Court in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, as reported in 1997 (1) GLH 381. In the said case, last registered offence was of May 20, 1996 and the order of detention came to be passed on November 05, 1996 after delay of 5 months and 15 days. In the said case also, the detaining authority had relied on two incidents of 2nd of October and 10th of October, 1996, both unregistered cases. In these circumstances, this Court observed that the order of detention was vitiated on account of delay in passing the order so as to snap the life link between the activities of the petitioner and passing of the order. This Court relied upon a decision of PRADEEP NILKANTH PATURKAR vs. S. RAMAMURTHI AND OTHERS, as reported in 1993 Supp (2) p 61.

10. In the present case also, there is apparent delay of more than two months in passing the order of detention so as to snap the live link between the activities of the petitioner and the detention. The explanation offered by the detaining authority in this respect is not satisfactory. The incidents which were occurred before the date of last registered offence were recorded by the sponsoring authority on 26th of November, 2004 and the question of continued objectionable activities of the petitioner would not arise. The two months delay, therefore, in passing the order of detention after the last registered offence is undoubtedly fatal for the further detention of the petitioner. In this view of the matter, the order under challenge in this Special Civil Application is required to be set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by the District Magistrate, Bhavnagar, on 28th of December, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Ashwin Natubhai Gadhavi is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS

permitted.

(J.R. Vora, J.)